(1895) 54 N. J. Eq. 231, 34 Atl. 682. The instant case held, however, that vital public interests were involved, that the decree of annulment would establish the status of the parties beyond any doubt, and that if the defendant should remarry, such marriage and the status of children born therefrom would not be subject to question. It is submitted that the court applied the most desirable rule. The courts holding to the contrary admit the invalidity of the second marriage of which annulment is asked, but disregard the obvious public benefits to be gained from having such a fact made a matter of record by judicial decree. Nevertheless, the wife may be held criminally for bigamy. *Cf. Baker v. State* (1920, Fla.) 84 So. 99.

PERSONS—INSANE PERSONS—CONTRACTS—DEEDS.—The guardian of an insane person brought suit to set aside two deeds of certain real estate owned by the ward. The land was conveyed to one Weston, who knew of the mental condition of the grantor, and then the land was attached by the defendant White and a judgment recovered. *Held,* that the deeds should be set aside, even though the defendant was in the position of an innocent purchaser from the grantee. *Brewster v. Weston* (1920, Mass.) 126 N. E. 271.

The issue raised by this case is one concerning which there have been many contradictory decisions. It seems settled that the deed of an adjudged incompetent is absolutely void. *Thorpe v. Hanscom* (1896) 64 Minn. 201, 66 N. W. 1; *Redden v. Baker* (1882) 86 Ind. 191. But some cases go further and hold that, as the lunatic has nothing which the law recognizes as a mind, he is not capable of forming an intent to which the law will give effect; therefore his deeds or contracts are void, even though he had not been adjudged insane at the time of the acts. See *Dexter v. Hall* (1872, U. S.) 15 Wall. 9, 20; *cf. Galloway v. Hendon* (1901) 131 Ala. 280, 31 So. 603. It is suggested, however, that this view is based on a mistaken idea as to the mutual assent necessary for a contract. Actual mental assent is not material, the important thing being what each party is justified in believing from the actions and words of the other. See Corbin, *Offer and Acceptance* (1917) 26 YALE LAW JOURNAL, 169, 205. Therefore the weight of authority holds that the deed of an insane person is not void, but merely voidable. *Arnett's Committee v. Owens* (1901) 23 Ky. L. Rep. 1409, 65 S. W. 151; *Aetna Life Ins. Co. v. Sellers* (1900) 154 Ind. 370, 56 N. E. 97. And where a contract has been made and executed in good faith without knowledge of the insanity (or of circumstances, such as office found, which have the same effect as knowledge) the incompetent is under a disability to avoid the contract unless the other party be put in *statu quo*. *Morris v. Great Northern Ry.* (1896) 67 Minn. 74, 69 N. W. 628; *Loman v. Paullin* (1915, Okla.) 152 Pac. 73. In this way the court succeeds in sufficiently protecting two innocent parties, and avoids the extreme view that even where the grantor has offered to return the consideration, the contract cannot be avoided, where there was no knowledge of the insanity on the part of the grantee. See *Bevins v. Lowe* (1914) 159 Ky. 439, 443, 167 S. W. 422; *cf. Rhoades v. Fuller* (1897) 139 Mo. 179, 40 S. W. 760; see 1 Williston, *Contracts* (1920) sec. 249 ff.

PROPERTY—FIXTURES—EFFECT OF NEW LEASE ON PRIVILEGE AND POWER OF REMOVAL.—In 1857 the plaintiff leased to the defendant a plot of land, on which the defendant erected a sulphuric acid plant. In 1868 and again in 1912 the defendant took a new lease. On vacating the premises at the expiration of this third lease the defendant removed certain portions of the chemical plant. The plaintiff brought an action for a breach of the defendant's covenant to deliver up the premises in good repair. *Held,* that the plaintiff should recover, as the parts of the plant removed were a part of the realty and were not tenant's

fixtures; and, as an alternate ground, that the tenant had lost his privilege and power to remove the fixtures by accepting a new lease without reserving the same. *Pole-Carew v. Western Counties Manure Co.* (1920, C. A.) 36 Times L. R. 322.

In the United States some jurisdictions hold that a tenant who accepts a new lease, silent as to fixtures already erected, thereby loses his privilege to remove them. *Sanitary District of Chicago v. Cook* (1897) 169 Ill. 184, 48 N. E. 461; *Laughran v. Ross* (1871) 45 N. Y. 792; *Watriss v. First National Bank of Cambridge* (1878) 124 Mass. 571. The contrary has been held in a steadily growing number of jurisdictions. *Second National Bank v. Merrill Co.* (1887) 69 Wis. 501, 34 N. W. 514; *Radey v. McCurdy* (1904) 209 Pa. 306, 58 Atl. 558; *Sassen v. Haegle* (1914) 125 Minn. 441, 147 N. W. 445. Even in those states where the strict rule has been followed it has been subsequently closely limited. Thus a fine distinction is drawn between ordinary fixtures and trade fixtures, however firmly attached. *Bernheimer v. Adams* (1902) 70 App. Div. 114, 75 N. Y. Supp. 93; *Thomas v. Gayle* (1909) 134 Ky. 330, 120 S. W. 290. And where the second lease is merely a *renewal,* as contrasted with a *new* lease, the tenant is allowed to remove his fixtures. *Baker v. McClurg* (1902) 198 Ill. 28, 64 N. E. 701; *Woods v. Bank of Haywards* (1909) 10 Calif. App. 93, 106 Pac. 730. Maryland has repudiated the strict rule by statute. Md. Code, 1904, art. 53, sec. 28. The reason usually given in support of the narrow view is that the fixtures are included in the second lease of the land. This would seem to be a begging of the question; it should not be inferred that the fixtures passed by the lease unless such an intention clearly was expressed in the lease. *Ogden v. Garrison* (1908) 82 Neb. 302, 117 N. W. 714; *Wright v. MacDonnell* (1895) 88 Tex. 140, 30 S. W. 907. Since the tenant has the privilege of removal during his first lease the natural presumption is that he does not intend to give up this valuable privilege. *Bergh v. Herring-Hall-Marvin Safe Co.* (1905, C. C. A. 2d) 136 Fed. 368. The idea that he is giving up his privilege of removing his fixtures by taking out a new lease never occurs to the lay mind. See *Red Diamond Clothing Co. v. Steidmann* (1912) 169 Mo. App. 306, 152 S. W. 609. The reason ordinarily given where a tenant who has given up possession at the expiration of his lease is not allowed to subsequently remove his fixtures is to keep him from disturbing his landlord or a succeeding tenant. But when the tenant stays in possession continuously under a new lease, this reason obviously does not apply. *Cf. Kerr v. Kingsbury* (1878) 39 Mich. 150. The instant case is plainly sound on its facts as to what constitutes a fixture. It accords with the earlier English cases in following the harsher and less desirable rule. *Cf. Leschalles v. Woolf* [1908] 1 Ch. 641.

PROPERTY—PERCOLATING WATERS—PRIVILEGE TO DIVERT.—The plaintiff and defendant owned adjoining lands. The defendant watered his cattle by tanks fed by siphons from waters percolating below his lands. The plaintiff sought to enjoin him from wasting this water by letting it overflow from the tanks into hog wallows, and claimed that the waste caused the diminution of a spring on the plaintiff's land. *Held,* that the plaintiff should have the relief sought. *De Bok v. Doak* (1920, Iowa) 176 N. W. 631.

The earliest cases on this subject applied the maxim *"cujus est solum, ejus est usque ad coelum"* and held that damages sustained by the diversion of percolating waters were *"damnum absque injuria." Greenleaf v. Francis* (1836, Mass.) 18 Pick. 117; *Acton v. Blundell* (1843, Exch.) 12 M. & W. 324; *Chasemore v. Richards* (1859) 7 H. L. Cas. 349; *Huber v. Merkel* (1903) 117 Wis. 355, 94 N. W. 354; *cf.* Summers, *Property in Oil and Gas* (1919) 29 YALE LAW JOURNAL, 174. Other reasons assigned were that the uncertain nature of percolating waters made the application of strict rules difficult; that the act of digging being lawful, the motive for the act could not make the actor subject to damages. *Frazier v.*